IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 6329 of 1987

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

BHARAT KUMAR M VYAS

VERSUS

STATE OF GUJARAT

Appearance:

MR MUKUL SINHA for Petitioner

MR HH PATEL, AGP, for Respondents

CORAM : MR JUSTICE S.K. KESHOTE

Date of Decision : 04/04/2001

C.A.V. JUDGMENT

#. This petition by the 4 petitioners in all is filed under Article 226 of the Constitution and they are praying for quashing and setting aside the order

(Annexure H) of the respondent No.2 under which there services were terminated. The second prayer is made to restrain the respondents, their servants & agents from preventing the petitioners from discharging their duties on the post of Wiremen & Helpers under the respondent no.2's office till pending the hearing and final disposal of this petition.

#. This petition was presented in this Court on 2.12.87. It has come up for preliminary hearing in the court on 3.12.87. On this day, this Court has been pleased to issue notice pending admission and notice as to interim relief returnable on 17.12.1987. On 17.10.88, this matter was admitted. So far as the prayer made by the petitioners for grant of interim relief is concerned, the same was refused. So as a result of the aforesaid order, it is now no more in dispute that the petitioners are not in service of the respondents.

#. The facts of the case as emerge from the petition are that the petitioner No.1 has passed SSC examination and has also passed examination of Wiremen in 2nd Class. The petitioner No.2 is a non-matriculate and has also passed Wiremen examination.

The petitioner No.3 holds the qualification of Helper and Wiremen and has passed SSC examination also. The petitioner No.4 has passed F.Y.B.Com and has also passed Wiremen examination in 2nd class.

It is the say of the petitioner No.1 that he is the only earning member in his family and he has to maintain his parents and younger brother.

Similarly, the petitioner No.4 stated to be the only earning member in his family.

The petitioner No.2 also stated to be the only earning member in his family which consists of his parents, his wife, 3 daughters and one son.

The petitioner No.3 also falls in the same line and claims himself to be the only earning member in the family which consists of 9 members including his wife, parents, 2 younger brothers, 2 younger sisters and his own son.

#. The Home Department of the Government of Gujarat vide its resolution dated 23.7.84 created 2 posts of Wiremen and 2 posts of Helpers for maintaining and

preserving 45 sirens situated in different parts of the Ahmedabad city under the Civil Defence Directorate.

Initially, these 4 posts were created temporarily for a period of six months i.e. upto 28.2.85. It is made clear that though these posts are created in the centre of Civil Defence but subsequently are to be transferred to the Roads & Building Division, now known as Buildings and Communication. It is further resolved that 50% expenses for these posts shall be borne by the Union Government.

It is the case of the petitioners that subsequently, the Government has extended the period of these 4 posts upto 1998.

#. It is alleged that the respondent No.2 issued interview calls to all the petitioners vide letter dated 17.1.86. Pursuant to that interview calls, the petitioners were selected and accordingly given the appointments. Under the order dated 21.8.86, all the petitioners were given extension on the posts of Wiremen & Helpers for a period of 2 months. Their term of appointment orders for the posts of Wiremen/Helpers were extended for a period of 2 months and that was further extended upto 28.2.87, under the order dated 26.11.86.

The petitioners have not produced any order of the respondent No.2 extending their term of appointment beyond 28.2.87.

Under order dated 23.4.87 of the respondent No.2, the services of the petitioners were transferred to the Office of the Executive Engineer, Electricity, Roads & Building Division, ESI. In the order dated 23.4.87 it is stated that the lien shall be maintained of the petitioners in the department vice the Directorate of Civil Defence. The petitioners submitted that they worked on the posts and they have completed 240 days in ESI. The posts of Wiremen & Helpers still exist meaning thereby that the posts were not abolished. These posts were created for the maintenance of 45 sirens, which also continue meaning thereby , the work was of perennial nature. The Union of India & State Government with an object to maintain internal security of the public and to warn the public against the attack of air force and on account of natural calamity and to take precautionary measures to maintain the security of the public at large have installed these sirens at various places in the city of Ahmedabad and these are required to be maintained and operated regularly.

Concluding this what it is conveyed that so long as Civil Defence Department and the sirens exist, the posts of Helpers & Wiremen cannot be abolished. It is alleged that the petitioners have been given status of permanent government employees in as much as their pay and wages are fixed and are entitled to all the benefits prescribed by the Government. The Government has also started to deduct Provident Fund from their salary. Regular service books of the petitioners are being maintained by the respondents. It is a complaint of the petitioners that in spite of all these facts and circumstances, the respondent No.2 by his order dated 30.11.87 terminated their services on the ground that their services are not required. It is also ordered that 1 month notice salary will be paid to the petitioners. The respondent No.2 is Director of Civil Defence, Gujarat State, Ahmedabad. The petitioners have filed appeal against the order of the respondent No.2 to terminate their services before the Gujarat Civil Services Appellate Tribunal.

The petitioners, if we go by the facts of this case are taken to be the workmen and the place where they were working was taken to be industry by the respondent No.2 which is clearly borne out by the order under which their services were terminated. The petitioners also on their turn do not dispute that they are the workmen and the place where they were working is industry. This is clearly borne out from the fact that in this petition, the petitioners prayed for giving them protection under Section 25-F of the Industrial Disputes Act, 1947.

Reply to this Special Civil Application has been filed by the respondent No.2 to which the petitioners filed their rejoinder.

#. Shri Mukul Sinha, Learned Counsel for the petitioners contended that the work for which the petitioners were given appointment is of a perennial nature and their services could not have been brought to an end in the manner and fashion as what it has been done in the case in hand.

The second contention raised is that though their services were transferred to Road & Building Department but the lien was maintained or ordered to be maintained in the Parent Department, Civil Defence Department. Had the lien being maintained, their services could not have been terminated so long as the work for which they have been appointed is available.

In the alternative, it is contended that if the Road & Buildings Department does not want to continue them in service then the petitioners should have been sent back to their parent department. In his submission, the parent department would have no justification to terminate their services.

It has next been contended that before terminating their services, the petitioners were not given one month notice or 1 month pay in lieu thereof. In support of this contention, the Learned Counsel for the petitioners places reliance on Rule 30 of the Bombay Civil Services Rules, 1959.

Lastly, it is contended that the orders of termination of the services are not implemented in as much as the petitioners are not paid 1 months notice pay and therefore there is no termination of the petitioners from services.

It is contended that otherwise also the petitioners are entitled to retrenchment compensation in as much as they have put in service of more than 240 days in a year & the respondents are under a legal duty to follow the procedure under Section 25-F of the Industrial Disputes Act before bringing their services to an end. Shri Sinha in support of his contention placed reliance on an unreported Division Bench judgement of this Court in SCA No. 5778 of 1998 with C.A.No. 1938 of 1996 decided on 2.10.91.

#. The Learned Counsel for the respondent on the other hand contended that this petition is wholly misconceived. The petitioners were given the appointment purely on adhoc temporary basis. The posts were temporary, their appointments were fixed term appointments. After 28.2.1988, the term of their appointments was not extended. It is a case of a back door entry meaning thereby, the petitioners appointments have not been made in accordance with the recruitment rules or by inviting the applications from the open market. As the appointments of the petitioners were purely adhoc & temporary no question does arise of their having any lien on the post or in the parent department. One month's notice pay has been given to them. It is contended that this petition is wholly misconceived. When the petitioners are claiming benefit under the special Act for that benefit they have to avail of the remedy provided under that Act. Lastly, it is contended that this petition deserves to be dismissed only on the ground of availability of 2 alternative remedies to the

petitioners. First is by way of appeal before the Gujarat Civil Services Appellate Tribunal and 2nd is by way of approaching the Labour Court.

#. I have given my thoughtful consideration to the submissions made by the Learned Counsel for the parties.

#. From the resolution of the Government of Gujarat, Home Department No.NGS-2183-1932-C, Sachivalaya, Gandhinagar dated 23-7-84, I find that these four posts, two of Wiremen and two of helpers were created for a period of six months i.e. upto 28th February, 1985 from the date of first recruitment. From para-2 of this resolution it is clear that these posts were to be created by the Director of Civil Defence and thereafter these posts were to be transferred to the Roads & Buildings Department. However, the entire expenditure of these posts shall be met from the grant sanctioned for Director of Civil Defence and the same shall be allocated to the Roads & Buildings Department. On the record no document whatsoever is there nor it is the case of the petitioners that these posts created for a period of six months i.e. upto 28th February, 1985 on the date of first recruitment later have been made permanent. The first appointment order of the two petitioners on the post of Wiremen is dated 14-2-1986. This appointment was given to these two persons on temporary basis for six months. These appointments thereafter were subject to approval of the Government to be continued for further period. Six months' period expired in the month of August, 1986. From the document annexure `E" I find that term of appointments was extended upto 28-2-87. From 28-2-87, the term of appointment of the petitioners was extended is not established. No document is produced on the record that the term of appointment of the petitioners was extended after 28-2-87. Reference has been made by the learned counsel for the petitioners during the course of arguments to document annexure `F' i.e. the order of Director of Civil Defence, Gujarat State, Ahmedabad dated 24-4-87 and it reads,

"The following two Wiremen and two helpers appointed for maintenance and repairs of sirens installed in the city of Ahmedabad as per order under Ref.1, are hereby transferred to the office of Deputy Executive Engineer, Electrical Division, Roads & Buildings Department, E.S.I. Electric subdivision. They shall continue to hold lien, rights and claims with this office and shall be binding as per the rules of the

Government."

It is not the case of the petitioners nor any document has been produced that they were ultimately appointed on the post of Wiremen and helpers on long term basis i.e. made permanent. It is not out of context to state that the appointments of the petitioners were at any point of time approved by the Government, is not made known to the court by the petitioners. From order annexure `C' the extension of the term of appointments of these petitioners was subject to the approval of the Government and in the absence of that approval, otherwise also, their appointments could not have been continued. The Director of Civil Defence, Gujarat State, Ahmedabad as per the order dated 14-2-86 was competent to give temporary appointment only for six months and further continuation thereof was only with the approval of the State Government. In the document, annexure `E', reference has been made to four orders/letters /resolutions out of which one is of the Government and rest are of the Director of Civil Defence. There is no document on the record, as stated earlier and to be stated at the cost of repetition showing that the term of appointment of the petitioners has been extended beyond 28-2-87. In the special civil application in para-3 thereof, the petitioners stated that creation of four posts were extended by the Government upto 1988. It is a mere statement made by the petitioners and in proof thereof, they have not produced any record. It is also not admitted by the respondents in the reply.

##. From document, annexure `A' I find that the Government of Gujarat, Home Department, Sachivalaya, Gandhinagar created these posts for a period of six months i.e. upto 28-2-85 from the date of first recruitment. These posts come to an end or stood abolished on 28-2-85 as the Government has not extended the period. In fact it appears to be a case where the Director of Civil Defence, Ahmedabad on its own taken the benefit of this order and made these appointments. These appointments of the petitioners even if it is taken to have been made after calling the names of the candidates from Employment Exchange, Ahmedabad are not legal. The Director of Civil Defence has no right to extend the term of posts which have been created by the State Government for fixed term. This is exclusively in the domain of the State Government and on the record, no such document is produced by the petitioners for extension of the term of the posts. In all the documents which have been produced on the record by the

petitioners, I find reference to the orders made from time to time by the Director of Civil Defence, Ahmedabad except one document of the State Government i.e. resolution dated 23-7-84, annexure `A'. In case the term of posts would have been extended then in all the subsequent orders passed by the Director of Civil Defence, reference to the same would have been made. The very entry of the petitioners in the service is bad in law. This will not stand regularise, corrected or legal merely because the Director of Civil Defence, Ahmedabad has taken care to get the names of the candidates to be sponsored by the Employment Exchange, Ahmedabad. Prima-facie the possibility of extending favour to the petitioners by the then Director of Civil Defence, Ahmedabad cannot be excluded. It is further fortified from the fact that these four petitioners were kept on deputation with him for a considerable period and under the direction dated 23-4-87 they were sent to the office of the Deputy Executive Engineer, Electrical Division, Roads & Buildings Deptt., E.S.I. Electric Subdivision. It appears to be an another act of favouritism of the officer concerned to make out the way for the petitioners to continue in the Department. The Roads & Buildings Department has noticed this fact and accordingly the Director of Civil Defence would have been under compulsion and passed the order of termination of services of the petitioners. When the period for which the posts were initially created has not been extended by the State of Gujarat, the appointments of the petitioners on temporary basis on the post and their continuation from time to time upto 28-2-87 is illegal and does not confer any right upon the petitioners and does not provide justification to them to approach to this Court by this petition under Article 226 of the Constitution and praying therein for quashing and setting aside of the order under which their services were terminated.

##. Learned counsel for the petitioners submitted that the petitioners were appointed for the work perennial in nature and their services could not have been terminated. From the document annexure `A' resolution of the Government dated 23-7-84, it is difficult to accept that the work for which the posts were created therein are of perennial nature. If it would have been as what it is contended by the counsel then the posts would not have been created only for six months upto the period 28-2-85. This is also fortified from the fact that the petitioners have not produced any document to show that this period of creation of the post has been extended by the State Government from 28-2-85. That

apart from para-2 of the document, annexure `A' these posts were clearly created for temporary period as the work was temporary in nature in the office of the Director of Civil Defence. This work ultimately has to be looked after the Roads & Buildings Deptt.. There is all possibility that ultimately the posts would have been created in the Roads and Buildings Deptt., but on this aspect, the learned counsel for the petitioners has failed to throw any light. This contention of the learned counsel for the petitioners that the work was of perennial nature deserves no acceptance.

##. Another contention raised is that under the order dated 23-4-87 while transferring the petitioners to Roads and buildings Deptt, the Director of Civil Defence, Ahmedabad ordered maintaining of the petitioners lien, rights and claims in its office. However, as per the Rules of the Government, reference here may have to the provisions as contained in Rules 18A, 18-B and 19 of the Bombay Civil Services Rules, 1959 (hereinafter referred to as `the Rules, 1959') this contention has no legs to stand. Before digesting to these three Rules of the Rules, 1959;, I consider it to be appropriate first to have a glance to the definition as given to lien in the Rules, 1959. `Lien' has been defined in clause 31 of Rule 9 of Rules, 1959 which means the title of the Government servant to hold substantively either immediately or on the termination of the period or periods of absence a permanent post including tenure post to which he has been appointed substantively. It is a title conferred on the Government servant to hold substantively the permanent post, including tenure post to which he has been appointed substantively. Rule 18-A of the Rules, 1959 makes a provision how a Government servant acquires lien on the post. A Government servant acquires a lien on a post on his substantive appointment to a permanent post. Rules 18-B and 19 of Rules, 1959, are not relevant to this matter as these are for different purpose than what is required to be considered in this case. A conjoint reading of clause 30 of Rule 9 and Rule 18-A of the Rules, 1959, makes it clear that a Government servant acquires lien on a post on his substantive appointment to a permanent post. To acquire lien it has to be established to the satisfaction of the Court that the Government servant has been appointed substantively on a permanent post. Definition of `lien' no doubt makes reference to tenure post also but that also not different than permanent post. In the Rules 1959, I do not find that the Rule Making Authority has defined substantive appointment. In service jurisprudence,

substantive appointment is not unknown. Substantive appointment means an appointment made in accordance with the recruitment rules or where recruitment rules are not there in accordance with the procedure laid down by executive instructions in the form of standing orders, or resolutions of the State or in accordance with the provisions as contained under Article 16 of the Constitution of India. It is true that the provisions of Article 16 are also applicable to the temporary appointments meaning thereby temporary appointments are to be made after open invitation and affording an opportunity to all the eligible candidates. In this case even if it is taken in making of the appointments the provisions of Article 16 have been complied with still by these appointments, the petitioners have not acquired any lien on the posts. While creating the post, three things are to be specified in the order of creation, namely, nature of post i.e. permanent or temporary, the eligibility for appointment on the post and the mode of recruitment. In the order of creation of post, two things have not been mentioned i.e. the eligibility for the post and the mode of recruitment. However, one thing is clearly mentioned that these posts were temporarily created for fixed term. The period for which the posts were initially sanctioned was not extended by the State Government and posts were never made permanent. This contention of the learned counsel of the petitioners is devoid of any substance and merits. The lien on a post can only be acquired in accordance with the Rules, 1959. It cannot be allowed to be acquired or accepted to be acquired by the Director of Civil Defence, Ahmedabad. Whatever is mentioned in he order dated 23-4-87 by the Director of Civil Defence, Ahmedabad re. continue to hold lien, rights and claims with the office by the petitioners will not confer or create any right in favour of the petitioners. The Director of Civil Defence, Ahmedabad has no power or authority or competence to term the petitioners acquiring lien which otherwise is not acquirable by them under Rules, 1959. Anything if is mentioned in the order which is contrary to statutory rules, then Rules will prevail. Otherwise also, this sentence has to be read as a whole and the Director of Civil Defence, Ahmedabad made it clear that it shall be binding as per the rules of the Government. Rules nowhere permits for such lien and on this recital, no such claim of the petitioners can be accepted.

##. When the petitioners have no lien on the posts in the Civil Defence Department, this contention raised by the learned counsel for the petitioners that Roads and

Buildings Deptt. should have sent them back to their parent department is of no relevance and substance and any help to the petitioners. Otherwise also, there is a fallacy in this contention. The Roads and Buildings Deptt. have sent these persons back to the Civil Defence Deptt. which is borne out from the fact that the services of the petitioners were terminated by the later department.

##. Now remains the last contention of the learned counsel for the petitioners to be considered. This contention relates to two aspects and with reference to both these aspects, the matter has to be considered.

##. In para-12A of the special civil application, the petitioners averred that the impugned orders i.e. the order terminating the services of the petitioners are not fully implemented inasmuch as the petitioners are not paid one month's notice pay and therefore, there is not termination of the petitioners' services. The petitioners further submitted that even otherwise they are entitled to retrenchment compensation inasmuch as they have put in service of more than 240 days and therefore, they are required to follow the procedure under section 25F of the Industrial Disputes Act and the termination of services of the petitioners without following the procedures under section 25F of the Industrial Disputes ACt is clearly illegal, void and of no legal effect. In the writ petition, this was the only contention raised, but during the course of arguments, learned counsel for the petitioners has argued that the termination of the services of the petitioners is bad in law as the respondents have not complied with the provisions of Rule 33 of Rules, 1959.

##. Firstly, I may deal with the contention aforesaid of the learned counsel for the petitioners. Rule 33 of rules, 1959 provides that the services of temporary Government servant shall be liable to termination at any time vide notice in writing given to him by appointing authority. It is further provided that where the temporary government servant has put in services for a period exceeding one year, the period of such notice shall be one month and where such government servant has put in service for one year or any period less than one year, the period of such notice shall be one week. Proviso to sub-rule (1) of Rule 33 empowers the appointing authority to forthwith terminate the services of a government servant by payment to him a sum equivalent to the amount of his pay plus allowances for the period of notice at the same rate at which he was

drawing pay and allowances immediately before the termination his services or as the case may be for the period by which such notice falls short of notice period.

##. It is the case of the petitioners that they worked continuously for a period of one year and nine months and on this point, dispute has not been raised by the respondents in the reply. So as per clause 3 of sub-rule (1) of Rule 33 of Rules, 1959, this notice should have been of one month and naturally where the services are to be terminated forthwith in lieu thereof, payment to sum equivalent to the amount of one month's pay plus allowances at the same rate at which the petitioners were drawing pay and allowances immediately before termination of services.

##. Learned counsel for the petitioners in support of his contention that the services have been terminated without notice and pay in lieu thereof, placed reliance on the decision of this Court in the case of Arun Mehta vs. State of Gujarat (supra). But this decision is of little help to the petitioners in the facts of their cases, which is decided on its own facts.

##. Benefits of Rule 33 of Rules, 1959, claimed by the petitioners are legal right conferred under the statutory rules. Before the petitioners pray for enforcement of their legal right conferred to them under a statute, it is for them to establish to the satisfaction of the court that they are legally appointed on the post in the Government service. Where appointment of temporary government servant is not legal, the provisions of Rule 33 of Rules, 1959 will not be applicable to such a case. Where the litigant expects compliances of the legal provision by the Government before taking any action, simultaneously it is to be established and accepted as a fact by the court that temporary appointments are made legally. The petitioners are claiming the relief from this court under its extraordinary equitable jurisdiction and more so a discretionary remedy. This court sitting under Article 226 of the Constitution only on this abstract breach of legal provision may not give any relief even where it is satisfied that this provision has been breached in making of the order if where it is satisfied that the very induction of the petitioners in services as temporary government servants is bad in law or not legal. As stated in the earlier part of the judgment the appointments of the petitioners were made on temporary basis and for fixed term and these were not

legal appointments, even if provisions of Rule 33 are applicable and breached by the respondents, on this ground, no relief can be granted to the petitioners. Where a temporary government servant is legally appointed and his services are to be brought to an end certainly in that case there may be some justification for such a contention but not in a case where the very induction of the petitioners as temporary government servant was not legal. Before a citizen claims for his right, his claim should be bonafide, meaning thereby, he has to exhibit himself as a law abiding citizen. The petitioners enjoyed their entry in the services by making their illegal appointments by the respondents and when question comes for termination of their services, they cannot legally justify this claim as made in this petition. A person who enters in the service through back door, if he is sent out through back door, no grievance can be made by him on the ground of breach of some statutory provisions made in passing of the order of termination of their services.

##. The petitioners have not specifically raised this contention in the special civil application. It is true that the ground which has not been taken in the writ petition can be permitted to be raised during the course of arguments in appropriate case where it is pure question of law but not a mixed question of law and fact. This ground raised by the learned counsel for the petitioners during the course of arguments is not purely a legal issue or question of law. First it has to be established by the petitioners as a question of fact that notice or pay in lieu of notice has not been given to the petitioners before terminating their services. Unless it is pleaded in he writ petition, there is no occasion for the respondents to controvert the same. Consequence of not giving notice or pay in lieu of notice may be a legal matter. This is another ground on which this contention raised by the learned counsel for the petitioners cannot be accepted. Otherwise also, if we go by the pleadings of the respondents, this contention raised by the learned counsel for the petitioners is wholly misconceived. Rejoinder to the reply has been filed by the petitioners. In rejoinder to the reply, I find that the petitioners have not specifically given reply to the contentions of para 5 of the affidavit in reply. However, in para-5 of the rejoinder, the petitioners stated that for the facts stated in this para show that the stand taken by the Department in para 5 is factually incorrect. I have gone through the contents of para-5 of the rejoinder and I do not find any specific denial by the petitioner to

the statements made by the respondents in para-5, which reads, "though it was not necessary to give any notice or notice pay to the petitioners we have paid one month's notice pay including allowance to the petitioners gracefully. So it is not in dispute that one month's notice pay including the allowances has been paid to the petitioners. From the order of termination of their services also, I find that there is a recital for payment of notice pay and allowance. It is the defence of the respondents that the appointments of the petitioners were purely on temporary basis on temporary posts for fixed term, no notice or notice pay is required to be given still this compliance has been made.

##. There is yet another ground on which this contention raised by the learned counsel for the petitioners cannot be accepted. From the initial appointment orders and one order of extension of term of appointment and the reply to the special civil application, it is clear that the petitioners were appointed on purely temporary post on temporary basis for a fixed term. In reply to the special civil application in para-6, the respondents stated that the term of temporary appointments of the petitioners was extended by the Government in its Home Department but the respondents have also not produced any document in support of this plea and the State of Gujarat has not filed any reply to the petition and in these factual aspects, coupled with the documents which have come on record, it cannot be accepted. So the substance of the matter is that these were fixed term purely temporary appointments on temporary posts. Such appointments come to an end automatically by efflux of time. For termination of such appointments, there is no need to give any notice and provisions of Rules 59 also need not to comply. Here reference may have to the Division Bench decision of this Court in the case of Bhanmati Tapubhai Muliya vs. State of Gujarat reported in 1995 (2) GLH 228. Speaking for the Division Bench His Lordships Mr. Justice B.N. Kirpal, Chief Justice as he then was observed:

7. Before concluding, reference may be made to the decision of the Supreme court in the case of State of Gujarat and Anr. vs. P.J. Kampavat & Ors., XXXIV (1) : 1993 (1) GLR 848, wherein it was held that persons appointed on a specific condition that their services will be

purely temporary and liable to be terminated forthwith without any notice cannot seek any protection. In that case, the appointment was made for a limited period upto the tenure of the Minister's establishment and the Supreme Court held that with the tenure of the Minister coming to an end, the services of the employe also ended simultaneously and that no order of termination as such was necessary for putting an end to the service, much less a prior notice. In the present case also, when the appointment is for a fixed period i.e. upto 31st July, 1985, the legal effect is that the appointment would automatically come to an end after 31st of July, 1985 and even a formal order terminating the appointment would not be necessary.

8. Another case, to which reference may usefully be made, is that of Dr. Arundhati Ajit Pargaonkar vs. State of Maharashtra & Anr. JT 1994 (5) SC 378. In that case, the appellant was appointed after selection on 16th September, 1978 and the letter of appointment stated that the appointed was "... on a purely temporary basis pending further order as Lecturer in Dentistry at the B.J. Medical College, Pune from date of taking over charge...." She worked for about 9 years and then, her services were terminated. The appellant sought regularisation of her services and it was observed by the Supreme Court that eligibility and continuous working for howsoever long periods should not be permitted to overreach the law. The appellant was held not entitled to claim regularisation even though she had worked without break for 9 years.

##. It is no more res integra that temporary appointment continue to be temporary until it culminates in permanent appointment under the order of the appointing authority or by application of some statutory rules. Reference here may have to the decision of the Apex Court in the case M.P.H.S.V.N. vs. Devendra Kumar reported in JT 1995 (1) SC 198. Reference here may also fruitfully have to the decision of the Apex Court in the case of State of Gujarat vs. P.K. Kumpavat reported in 1993 (1) GLR 848. In this case it is held that Rules, 1959, do not apply to the appointments which are purely temporary and the same are liable to be terminated forthwith without any notice. The appointments being simply contractual appointments the employees cannot

seek any protection.

##. So far as the contention made and ground raised with reference to the provisions of section 25-F of the Industrial Disputes ACt, 1947, it is suffice to say that for this, this petition is wholly misconceived. The petitioners are claiming the benefits of section 25-F of the ID Act, 1947, a special statute and in that special statute, remedy is provided and that remedy could have been only appropriate forum for this grievance. In the special civil application, the petitioner titled it to be "In the matter under Articles 14 and 16 and 226 of the Constitution of India." From this title also, it is clear that the petitioners have not filed this petition claiming any benefits under the ID Act, 1947. This has been done for the reason that for violation of provisions of section 25-F of the ID Act, 1947 if the grievance is to be made then remedy lies elsewhere and not before this Court. Otherwise also, the termination of the services of the petitioners will not amount to retrenchment and this matter is squarely covered by the provisions of section 2 (oo) (bb) of the ID Act, 1947.

##. This petition has been filed in this Court on 2-12-1987. Rejoinder to the reply has been filed by the petitioners in February, 1988. Now after about eleven years have passed but the subsequent developments which might have taken place and certainly would have taken place are not brought on record. In such matters, it is expected from the litigants to bring on record the up-to-date state of affairs. The petitioners were low paid employees and after termination of their services in ordinary course they would not have afforded to remain unemployed. They are the technical persons and for them there would not have been any difficulty to get job elsewhere. There is all the possibility that by now the petitioners would have settled elsewhere in the services. The petitioners nowhere have specifically stated in the petition as well as in the rejoinder to the reply that they are unemployed. It is also not stated that they still continue as unemployed from which it can reasonably inferred that they have been employed elsewhere and are settled. In case it would not have been correct then certainly the petitioners would have brought all these facts on record. This Court has not protected the petitioners by grant of interim relief.

##. In the result, this petition fails and the same is dismissed. Rule discharged. The petitioners are directed to pay costs of this petition to the State of Gujarat.

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jitu/zgs